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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,892	07/15/2003	Jessica Elizabeth LeMay	460.2221USQ	7326

7590 09/24/2010  
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EXAMINER
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ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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09/24/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/619,892

**Applicant(s)**

LEMAY ET AL.

**Examiner**

LYNNE ANDERSON

**Art Unit**

3761

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-13, 15-20, 25, 31, 34, 37, 44 and 46-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-13, 15-20, 25, 31, 34, 37, 44 and 46-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 30 June 2010 have been fully considered but they are not persuasive.
2. In response to the applicant's argument that the shoulder region of the gripping region disclosed by Wada cannot mitigate slipping of a user's fingers from the gripping region, it is noted that the present claim does not require at what point in the insertion process the shoulder region mitigates slipping of a user's fingers. The shoulder region shown by Wada is fully capable of preventing a user's fingers from slipping too far forward from the gripping region, since the increased diameter of the shoulder region will stop the user's fingers from slipping. The shoulder region is capable of mitigating slipping of a user's fingers at the beginning of insertion, and during removal of the applicator, when the shoulder region is not inserted within a user's body. It is further noted that since the shoulder region is located in the applicator past the withdrawal end of the tampon, it is possible to insert the tampon fully without inserting the applicator past the shoulder region. Therefore, the applicant's argument that the applicator of Wada would be inserted past the shoulder region, causing the shoulder region to not be able to mitigate slipping of a user's fingers, is not persuasive.
3. In response to the applicant's argument that Voss, as modified by Wada, would have a maximum outer diameter located less than 50% of an overall length from the insertion tip, it is noted that the finger grip of Voss is located the distal end of the applicator barrel, as shown in figure 1. Wada is not relied upon for the teaching of the

overall dimensions of the applicator, but rather for the teaching of a gripping region having a shoulder and a flared region that gradually decrease in diameter from the barrel. Therefore, one would be motivated to form a gripping region having a shoulder and a flared region in the applicator barrel of Voss toward the distal end, since Voss discloses the applicator barrel is intended to be gripped at its distal end during insertion.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11-13, 15-20, 25, 31, 34, 37, 44, and 46-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over of Voss (4,361,150) in view of Wada et al. (6,432,076).

6. With respect to claims 11-13, 15-16, 25, 34, 44, and 46-50, Voss discloses all aspects of the claimed invention with the exception of the taper ratio and the finger grip having a gripping area with a decreased diameter. Voss discloses a tampon applicator assembly comprising a barrel 12, a plunger 13, and a pledget H, as shown in figure 1. The barrel 12 has an insertion area with an insertion tip 20, a finger grip area 18, and a tapered main section 15 therebetween. The tapered main section 15 has a maximum outer dimension located closer to the finger grip area 18 than the insertion tip 20, as shown in figure 1, and described in column 4, lines 15-19. The finger grip area 18 may be defined to include up to 25% of the distal end of the barrel 12, and therefore the

maximum outer dimension of the tapered main section 15 will be located from the insertion tip 20 about 75% of the overall length of the barrel 12. The insertion tip 20 comprises a plurality of petals 19, as shown in figure 1. The tapered main section 15 is tapered linearly from the maximum outer dimension to the insertion tip area 17, as shown in figure 1, and described in column 4, lines 15-19.

7. Voss discloses all aspects of the claimed invention with the exception of the taper ratio being about 1.08 to about 1.13. Voss discloses the main section being tapered, as described in column 4, lines 15-19, but remains silent as to the degree of the taper. The taper of the barrel of Voss is shown in figure 1 as being very gradual.

8. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the applicator barrel of Voss with a taper ratio of about 1.08 to about 1.13 to provide a gradual taper to the barrel.

9. Wada teaches a tampon applicator comprising a finger grip 8 having a shoulder region (shown but not numbered) adjacent the main section of the applicator and a flared region 9 adjacent the gripping region, as shown in figure 1. The shoulder region decreases in diameter to form a gripping region 8 having a smaller diameter than the main section of the applicator, as shown in figure 1. The flared region 9 has a diameter that continuously increases from the gripping region 8 to the second end of the barrel, as shown in figure 1. The increase in diameter from the gripping region through the shoulder region is fully capable of mitigating slipping of a user's finger, since the increased diameter of the shoulder region will stop the user's fingers from slipping. The

finger grip configuration of Wada provides the applicator with an area that is easily located and gripped during use of the applicator.

10. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the tampon applicator of Voss with the finger grip taught by Wada to provide an area that is easily located and gripped during use of the applicator.

11. With respect to claims 17-18, Voss discloses all aspects of the claimed invention with the exception of the insertion tip having a taper ratio of between about 0.7 and 0.9. Voss discloses the insertion tip is tapered at an angle of about  $90^{\circ}$ , as described in column 4, lines 33-45, but remains silent as to the ratio of the taper. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the insertion tip area of Voss with a taper ratio between about 0.7 and 0.9, in order to provide a taper having an angle of about  $90^{\circ}$ .

12. With respect to claims 19-20, 31, and 37, Voss discloses all aspects of the claimed invention with the exception of the petal length-to-width ratio being over about 2. Voss discloses the petals having a length greater than their width, as shown in figure 1, but remains silent as to the exact dimensions of the petals. Voss further discloses in column 4, lines 33-45, the length-to-width ratio of the petals must be sufficiently long to provide the insertion end area with a taper having an angle of about  $90^{\circ}$ . It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the petals of Voss with a length-to-width ratio of greater than about 2, in order that the petals having a length sufficient to provide the insertion end area with a taper having an angle of about  $90^{\circ}$ .

***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYNNE ANDERSON whose telephone number is (571)272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. A./  
Examiner, Art Unit 3761

/Tatyana Zalukaeva/  
Supervisory Patent Examiner, Art  
Unit 3761